

**CROWD  
CONDUCTED  
FRANK TRIAL  
SAYS  
PRISONER'S  
LAWYER**

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Tried and Convicted  
by the

Courtroom  
Spectators and  
Not by the Judge and  
Jury,  
Declares Rosser.

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*TODAY'S HEARING  
MAY*

*LAST UNTIL  
MIDNIGHT*

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Fight Is Bitter Over  
Conley's

# Testimony, Defense Declar- ing That It Should Never Have Been Considered.

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Declaring that the crowd and not the judge and jury tried and convicted Leo M. Frank of the murder of Mary Phagan, Luther Rosser, senior counsel for the prisoner, yesterday urged the many demonstrations for the solicitor general as sufficient reason why the convicted superintendent should have another trial.

This was, however, but one of the forty grounds argued Wednesday when the hearing began before Judge Roan in a little anteroom in the state library at the capitol. As 115 objections have been noted to the rulings in the case, it will be several days at least before a decision will be reached.

The proceedings are as tedious as the original trial was dramatic and thrilling. Both the solicitor and counsel for the defense fight bitterly and desperately over every detail. Wrangling and debate occupied more than two-thirds of the first day's session.

The hearing had hardly begun when Rosser blazed at Solicitor General Dorsey, who prosecuted the prisoner, the charge

that he was striving to hang Frank on any pretext, matter not how small:

“You would kill him on the dotting of a T or the crossing of a ‘t.’”

“And you,” retorted the solicitor, with equally as much display of spirit, “are trying to make a mountain of a mole hill.”

### **“Forty Clauses Examined”.**

The entire day was spent in examining forty of the 115 grounds contained in a single volume which the defense offers for a new trial. Neither side seemed to gain much headway. Heated disputes arose over many of the points, and much time was lost in going back over records and history of the case.

The hearing would undoubtedly have run into a night session had it not been for the closing hour at 6 o’clock of the library. Tonight the session will likely be held until midnight or later. It is Judge Roan’s expressed wish that the hearing be ended just as early as possible.

A tense battle was staged over the testimony of Jim Conley when the defense presented many parts of his story as grounds for new trial. The fight was entirely as spectacular as the one waged against Conley’s story during the trial. The result, however, was the tabling of those particular grounds pertaining to Conley for future examination.

Other grounds that were bones of contention between the prosecution and defense were those that related to testimony at the trial of Frank’s immorality. It was while the story told by the Jackson girl of Frank looking into a girl’s dressing room while she was disrobing was being discussed that the session came to an end at 6 o’clock.

### **Hearing Behind Closed Doors.**

Solicitor Dorsey was assisted by his assistant, E. A. Stephens, while Colonel Rosser and Colonel Arnold were aided by

Stiles Hopkins and others. The hearing was behind closed doors, less than a dozen persons, including reporters being admitted. It will probably last at least a week, though some say it will come to an end next Saturday.

So far, nothing has been mentioned of the affidavits charging bias against Jurors Johenning and Henslee. No witnesses have been examined. Only forty of the grounds given in the petition for a new trial have been considered.

Each clause is read by the defense. Objection—if there be any—is made by the solicitor. Argument follows. An end of which is the checking of the reason by Judge Roan for future use. It will require probably all of today to finish examining these 115 sections.

An agreement has been made between the two sides to admit any new evidence which might arrive for either defense or prosecution at the time it appears. This was done because both sides expect to obtain new affidavits relative to the jurors.

Both Mr. Arnold and Rosser objected vigorously at the opening of the hearing to reference to the records for argument presented by either the defense or solicitor. The stenographers, they declared, had recorded the argument inadequately, and that the only successful manner in which they could go back to argument of any kind during the trial was by memory.

#### **Agree to Use Records.**

It was agreed, however, to use the records. This was done after much

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# *FIGHTS FOR FRANK*

Photo by Francis E. Price

## **HERBERT HAAS.**

Photographed for Constitution Wednesday while Frank hearing was in progress. He is associated in the case with Arnold and Rosser.

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# *CROWD RAN TRIAL SAY FRANK'S LAWYERS*

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*Continued From Page One.*

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protest, during which Solicitor Dorsey said: "It is a remarkable thing about this business that the court stenographers failed to accurately record any of the important arguments—or, rather, any of those contained in the motion for new trial.

"This is the first time I've ever heard of such a thing happening. There isn't a man on earth who could recall those objections and arguments. It is strange—exceedingly strange—if they are not recorded as completely as they should have been."

One section objected to the admission as evidence of the talk of Detective Starnes over the telephone with Frank on the morning of the murder's discovery in which Starnes testified at the trial that he was guarded because of importance of the message he was conveying.

Among the other sections considered were the following:

The admission of the state's diagram of the pencil factory building to be used as evidence, and which was marked with Greek crosses and dots to outline the state's theory.

The admission of Black's testimony of Frank's conduct on the day of the discovery, which he compared with previous days.

The testimony of Black to the effect that counsel had been obtained by the time Frank was first carried to police headquarters.

### **Argue Over Bloody Shirt.**

The failure of the court to admit Newt Lee's admission of owning the bloody shirt as testified to by Witness John Black.

The court's failure to exclude a number of questions and answers of Jim Conley's testimony, which, the defense alleged, was highly prejudicial, and which involved transactions far removed from the real issue.

To this particular section, the solicitor answered that objection to Conley's story was not made until twenty-four hours after it was given. Also, that objection was made not until the defense had examined the witness in question.

A long argument lasting hours resulted over this. Colonel Arnold declared that Conley was not cross-examined upon the salacious part of his story, but merely regarding dates and incidents connected with his watching at the first door while Frank was alleged to have entertained girls and women on the office floor.

At the close of the dispute Colonel Rosser said:

“If this testimony of Conley’s is admissible, why, we’ll take our medicine. If not, we have been done a horrible injustice. And we’re not going to say we let that particular testimony hang this man. It won’t. It can’t.”

Of the other reasons named in the motion, the first following this dispute to be considered was the section relating to the negro’s story. It was an objection to Conley’s statement that the had seen Frank in a position with women in which he had never seen any other man “with children.” Objection was made on the grounds that it was highly prejudicial.

### **Made Too Late, Says Dorsey.**

Dorsey’s answer to this was that all objections to Conley were made after the defense had examined him thoroughly.

It was during the presentation of this section that Colonel Arnold accused Dorsey of having been guilty of contempt of court in having violated a rule of Judge Roan’s during Conley’s examination.

“We objected strenuously to any testimony of Frank being in his office with women. We received your ruling, your honor, Dorsey ignored it. It could have been construed that Frank was committing most any crime.”

“Yes,” laughed the judge, maybe such a crime as dancing the tango.”

“Which would be considerable crime,” rejoined the lawyer.

Other reasons were:

Because the court permitted Conley to tell of the trip on which he was taken by the police to interview Frank in the jail, and which he failed to do.

### **Solicitor Dorsey Objects.**

Because Mrs. Mattie White was allowed to take the stand to tell of her conversation with detectives on May 7 when she told of

having seen a negro loitering on the first floor of the pencil factory during the afternoon of the murder date.

A strong objection was made to this reason by the solicitor, who said:

“It was admissible evidence solely because her failure to report it immediately tended to show an effort toward concealment, which undisputedly bore indication of Frank’s guilt.”

Because the court permitted Sheriff Mangum to tell of his conversation with Frank when he strove to obtain the prisoner’s permission to talk with Conley in the presence of Chief Beavers and Harry Scott, the Pinkerton man.

Because Dr. Harris was allowed to tell of cabbage tests he had made on other men and to draw his own conclusions before the court of the time Mary Phagan met her death.

Because Jack Dalton was allowed to give testimony of matters and incidents which bore no remote relation to the issue at trial, and the exploitation of which, according to contention, was designed to create prejudice.

A strong plea—in fact, one of the strongest the defense claims in its first volume of grounds—is the record of demonstrations of the crowds during the trial. When these records were offered in the afternoon, Solicitor Dorsey replied:

“Your honor is thoroughly acquainted with these instances. I have nothing to say of them.”

### **Defense Gains a Point.**

After which Mr. Arnold requested Judge Roan to certify that the jury was near enough to hear the applause that rang out at times in the courtroom. Mr. Arnold also suggested a practical demonstration, offering to go to the scene of the trial for such a move.

To this the solicitor answered:

“It is a matter of evidence, and should be told by the jurors, not the judge.”

Mr. Rosser broke in:

“But the juror won’t admit it.”

“We have affidavits from most of them saying they never heard the outbreaks,” said Dorsey.

The result was the recording of Judge Roan’s opinion that the jury was situated within distance sufficient to hear any of the demonstrations in the courtroom.

The testimony of Herbert Schiff, chief clerk of the pencil factory, was also brought up during the hearing. One of the motion’s reasons was based on the colloquies between the solicitor and Schiff, when Dorsey, upon examining the witness from a personal standpoint, announced to the court that he was trying to show the chief clerks feeling in the case.

### **Tried by Crowd.**

It was during the argument over demonstrations in the courtroom that Colonel Rosser declared heatedly that it was his intention to show Judge Roan that it was the crowd and not the judge or jury who conducted the Frank trial and convicted him. This declaration was laughed at by the solicitor.

At the introduction of each section, Judge Roan made particular note of it and also the protest—whenever there was a protest—made by the solicitor. Each of the grounds will be probed before they are taken into consideration. This will take considerable time.

Today’s session will begin at 9 o’clock this morning.

# *Curious Citizens Barred From the Frank Hearing; Many Go to Wrong Place*

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Surprisingly large numbers of people congregated yesterday in and about the old city hall on Pryor street, expecting to be admitted to the hearing which they believed to be in progress in the structure on the motion of the attorneys for Leo M. Frank for a new trial.

As early as 8 o'clock Wednesday morning there was a regular stream of men weaving in and out of the old city hall refusing to believe the word of the attendants of the various court rooms that the Frank hearing was not in progress there. The visitors or would-be auditors, continued their vigil during the afternoon hours, but to no avail.

In the crowds which were about the temporary courthouse were seen many of the men who managed to attend the daily sessions of the original Frank trial.

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On account of the court being held in the first floor courtroom by Judge Calhoun, the Frank hearing was transferred to the library at the state capitol. The public has been barred from the rooms, only the attorneys on both sides, Judge Roan and the newspaper men engaged in the actual work of following the retrial motions, being admitted. Deputy Sheriff Plennie Minor is on guard at the capitol.

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# **PROFESSIONAL CARDS**

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